IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 10TH AUGUST 2007 / 19TH SRAVANA 1929

Bail Appl..No. 4842 of 2007()

CRMP.2951/2007 of ADDL. DISTRICT COURT, THODUPUZHA
CRIME NO.79/2006 OF VANDANMEDU POLICE STATION

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PETITIONERS/ACCUSED 2 AND 3

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1. SHINNICHEN, S/O.MICHAEL,
EDAMULAYIL HOUSE, VALIYATHOVALA KARA,
PAMPADUMPARA VILLAGE, UDUMBANCHOLA TALUK.

2. BIJU, S/O.KRISHNANKUTTY,
PUTHUPARAMBIL HOUSE, PAMPADUMPARA VILLAGE,
UDUMBANCHOLA TALUK.

BY ADV. SRI.SUJESH MENON V.B.

RESPONDENT/COMPLAINANT:

STATE OF KERALA,
REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 10/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.4842 of 2007

Dated this the 10th day of August 2007

O R D E R

Application for anticipatory bail. The petitioners face allegations under the Kerala Abkari Act. The petitioners were not arrested in the course of investigation. Investigation is now complete. Final report has already been filed. Cognizance has been taken by the learned Magistrate. Warrants of arrest issued by the learned Magistrate are chasing the petitioners.

2. According to the petitioners, they are absolutely innocent. Their failure/omission to appear earlier was not wilful or deliberate. The petitioners are now willing to appear before the learned Magistrate. But they apprehend that their application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. They, therefore, pray that directions under Section 438 and/or 482 Cr.P.C. may be issued to the learned Magistrate to release the petitioners on bail when they appear and apply for bail.

3. The application is opposed by the learned Public Prosecutor. After the decision in Bharat Chaudhary v. State of Bihar [AIR 2003 SC 4662] it is well settled that powers under Section 438 Cr.P.C can be invoked even in favour of the accused who apprehends arrest in execution of a non bailable warrant issued in a pending

proceedings. But even for that, sufficient and satisfactory reasons must be shown to exist to justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. I do not find any such reasons in this case.

4. It is for the petitioners to appear before the learned Magistrate and explain to the learned Magistrate, the circumstances under which they could not earlier appear before the learned Magistrate.

5. I find absolutely no reason to assume that the learned Magistrate would not consider the application for bail to be filed by the petitioners on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific directions appear to be necessary. Sufficient general directions have been issued in Alice George vs. Deputy Superintendent of Police [2003(1) KLT 339].

6. In the result, this bail application is dismissed but with the specific observation that if the petitioners surrender before the learned Magistrate and apply for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously - on the date of surrender itself.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007